

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT No. Z-273 922
Issued to: Vernon N. BOLDS
and
MERCHANT MARINER'S DOCUMENT No. Z-1107736
Issued to: Stanley G. BROOKS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2165

Vernon N. BOLDS
and
Stanley G. BROOKS

These appeals have been taken in accordance with Title 46 United states Code 239(g) and Title 48 Code of Federal Regulations 5.30-1.

By orders dated 26 October 1977 (BOLDS) and 27 October 1977 (BROOKS), an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida, revoked the seamen's documents of both Appellants upon finding each guilty of misconduct. The specifications found proved allege that BOLDS, while serving as crew messman, and BROOKS, while serving as bedroom utility, on board SS HESS VOYAGER under the authority of the respective document above captioned, did:

"on or about 29 July 1977 wrongfully have in your possession certain narcotics to wit; marijuana."

The cases of the Appellants were joined for a single hearing upon motion of the Investigating Officer. The hearing was held at San Juan, Puerto Rico, on 12 and 13 October 1977. The hearings were held in absentia, upon the failure of the Appellants to appear at the time and place specified, after their requests to the Administrative Law Judge for a change of venue were denied on the grounds of insufficient reasons stated in the requests. The Administrative Law Judge entered a plea of not guilty for each Appellant as to the charge and specification against each. Appellants were not represented by counsel in the course of the proceedings leading to the initial decisions in these cases.

The Investigating Officer introduced in evidence various documents, including the charge sheets, certification of shipping articles, and extracts from the official log of HESS VOYAGER, as well as his own testimony, that of the original Investigating Officer who served the charges in these case, and that of two

Customs Patrol Officers, who had discovered the offenses underlying the charges

Appellants did not offer any evidence on their own behalf, having been absent from the hearing.

The Administrative Law Judge introduced several items of correspondence in evidence, including the written requests of the Appellants for changes of venue and his denials of those request.

After the conclusion of the hearing, the Administrative Law Judge rendered two separate written decisions in which he concluded that the charge and specifications had been proved as to each Appellant. He then served a written order on each Appellant, revoking all documents issued to each as required by 46 CFR 5.03-4.

The decisions were served, on Appellant BOLDS on or about 7 November 1977, and on Appellant BROOKS on 7 November 1977. The individual appeals on behalf of each appellant were timely filed by their common attorney on 23 November 1977 and perfected on 31 May 1978.

Since these two cases were heard together and the appeals were filed by the same counsel on roughly the same grounds, it is appropriate to consider the appeals together.

FINDINGS OF FACT

On 29 July 1977, Appellant BOLDS was serving as crew messman and Appellant BROOKS was serving as bedroom utility, both on board SS HESS VOYAGER and both acting under the authority of their respective documents, while the vessel was in St. Croix, United States Virgin Islands.

The charges found proved in these cases arose from a routine boarding and search of the crew's quarters of HESS VOYAGER by two Customs Patrol Officer on the above date in St. Croix. The Customs Officer who investigated BOLDS' conduct was from St. Thomas. The Customs Officer who investigated BROOKS' conduct was from St. Croix. Each appellant paid an administrative penalty upon being charge with possession of marijuana. the payments enabled the Appellants to avoid arrest and to continue the ship's voyage to Port Reading, New Jersey. The payment of the fine did not constitute an admission of guilt and both Appellants later protested the payment.

On 10 August 1977, a Coast Guard officer assigned to the Marine Safety Detachment in St. Croix boarded HESS VOYAGER, while

the vessel was in St. Croix. That officer was on board to serve as a shipping commissioner to sign on new crewmembers. While on board the vessel, the officer was informed by the master of the vessel that the Appellants in these cases had been charged with possession of marijuana by the customs officers and that they had paid an administrative penalty. Acting on this information, the Coast Guard officer drew up the charges underlying the instant cases and informed the Appellants of their rights. That officer gave the Appellants notice that a hearing would be afforded them in San Juan, Puerto Rico on 22 August 1977. The Appellants were told that if they voluntarily turned over their documents, they would be given a hearing at a place of their choice. They declined to do so and retained their documents in order to remain with the ship until it completed its voyage. The Appellants were also told that they could seek a change of venue by contacting either the Administrative Law Judge assigned to their cases or the Coast Guard officer in San Juan who would be prosecuting their cases.

The Appellants thereafter submitted written requests for changes of venue to the Administrative Law Judge located in Jacksonville, Florida. Appellant BROOKS did not state any reasons for his request for a hearing in New York. Appellant BOLDS stated any reasons for his request for a hearing in New York. Appellant BOLDS stated only that New Orleans was his place of residence, that he would be there for the following several weeks, and that he desired a hearing in that city. The Administrative Law Judge denied these requests for lack of sufficient grounds stated. He treated the request as motions for a continuance, however, and rescheduled their hearings for 12 October 1977 in San Juan, giving notice of this to Appellants.

The Appellants thereafter made no further contact with the Administrative Law Judge or the Investigating Officer in San Juan. They both failed to appear in San Juan for their hearings, which were originally scheduled to be held at the United States Customs House. The hearings were called to order at the location but were then removed to the Coast Guard Marine Safety Office in San Juan because the hearing room in the Customs House was already in use.

BASES OF APPEAL

These appeals have been taken from the orders imposed by the Administrative Law Judge. It is urged that the decisions and orders entered in each case be reversed or, in the alternative, that the Appellants be granted a hearing de novo in which they would be allowed to present evidence in their defense. It is further urged, in the appeal of BROOKS, that the order, if upheld, be modified from a revocation to a six month suspension. In the appeal of BOLDS, it is urged that the revocation ordered be

modified to a suspension for a lesser, unspecified period of time.

It is contended that:

- (1) Appellants were denied due process of law by the Administrative Law Judge's denial of their applications for change of venue;
- (2) Appellants were denied due process of law by the Administrative Law Judge's findings of guilt on the basis of conflicting, insubstantial, and unauthenticated evidence;
- (3) Appellants were subjected to excessive and overly severe punishment.

APPEARANCE: S. Reed Morgan, Esq., New Orleans, Louisiana.

OPINION

In their first basis for appeal, Appellants urge that the denial of their applications for changes of venue constituted a denial of due process of law. A review of the facts and the sequence of events leading up to the Administrative Law Judge's denial of those motions is necessary to an evaluation of this basis for appeal.

The charges in these cases were served on Appellants in St. Croix, United States Virgin Islands, where the alleged misconduct was discovered on board SS HESS VOYAGER. HESS VOYAGER was at that time on a coastwise voyage, bound for Port Reading, New Jersey, having stopped on its way in St. Croix. Both Appellants had signed on board the vessel in Port Reading. Appellants were informed at the time the charges were served on them that a hearing of their cases would be held in San Juan, Puerto Rico. They were given the option of voluntarily turning over their documents, whereupon they would have been allowed to choose an appropriate location for their hearings. Neither Appellant was willing to surrender his document, preferring to remain with the ship to complete its voyage. Appellants were thereupon informed of their rights to request a change of venue before the date set for their hearings.

Appellants made timely request to the Administrative Law Judge who had been identified to them for changes of venue. Appellants BOLDS did not state any grounds for his request to have a hearing in New York City. Appellant BROOKS stated only that he resided in New Orleans, would be there for the following several weeks, and therefore desired to have his hearing in that city. At this point, it should be noted that mere residence of the moving party is not

proper grounds for a change of venue. Decisions on Appeal No. 1934, 2143.

Upon receiving these requests, the Administrative Law Judge contacted an Investigating Officer in San Juan to ascertain whether there were any objections to Appellants' motions. That Investigating Officer did object on the ground that the presence of a Customs officer to testify in each case would be required. In Appellant BOLDS' case, the customs officer was located in St. Croix. In Appellant BROOKS' case, the officer was located in St. Thomas. No other reasons were advanced, nor do any other reasons appear in the record, to necessitate the holding of the hearings in these cases in San Juan.

In light of the objections, the requested changes of venue were denied for lack of sufficient grounds stated in the requests. The Administrative Law Judge did reschedule the hearings for a later date, treating the requests as motions for continuance, but venue remained in San Juan. Nothing further was heard from Appellants until after a joint hearing was held in absentia and their documents were revoked.

Section 554(b) of Title 5, United States Code, requires that the proper time and place for a hearing be determined with due regard for the convenience and necessity of all parties and their representatives. the result of this determination or selection should be that venue is laid in a location that facilitates the adjudication of the case, while promoting justice. Specific factors to be considered include the availability and convenience of witnesses and access to evidence (Decisions on Appeal Nos. 982, 2143).

In the ordinary case of service of charges under R.S. 4450, under a normal presumption of regularity, the burden is upon the moving party to justify a request for change of venue. It is true that the reasons advanced by the Appellants here were not such as to have borne weight with an authorized trier of facts. Mere convenience to the party, such as being at his place of residence, does not disturb the presumption of regularity. Nor does slight inconvenience in availing oneself of the designated opportunity to be heard disturb the presumption. Assuming the regularity of the process, and assuming, arguendo, the validity of the power of the Administrative Law Judge to rule effectively upon matters before the opening of the hearing, there was no showing of good cause for a change of venue of the hearings for which notice had been given.

There is here, however, on the face on the matter, a disturbance to the appearance of regularity. The seamen involved were at St. Croix, serving aboard a vessel bound for New York, and

there is indications that both seamen questioned the propriety of San Juan, Puerto Rico, as the determined place for the hearing. In the absence of specific mandates as to venue in administrative hearings, the rule of reasonable notice is clearly seen to allow several possibilities for proper venue. In this cases, St. Croix certainly would have been an appropriate place, as the situs of the alleged offenses where the witnesses needed would prospectively be available. Other possibilities included, as an example, New York, with a prospect that the needed witnesses could just as well be deposed on written interrogatories. It is of some significance that hearings at New York were not ruled out by the Investigating Officer. The difficulty of obtaining witnesses was not seen as an insuperable barrier to scheduling the hearing for that place nor as even interposing a difficulty that would hamper the presentation of the desired evidence. The thought of New York as the place of hearing was rejected only because Appellants were unwilling to turn in the documents under the authority of which they would be serving on the voyage from St. Croix to New York.

There is no need to examine here other possible courses of action which might have satisfactorily resulted in hearings at New York or some other place; the fact is that the selection of San Juan de Puerto Rico, as the place of hearing, a place on a different island, a place to which the seamen would not conceivably be going in the normal course of events, a place which had no apparent connection with the alleged offenses, and a place at which the witnesses would be necessarily less available, does not present itself as inherently logical. The events proved this. Not only was it necessary for the needed witnesses to travel from St. Croix and St. Thomas, respectively, to testify at the hearing, and for the Administrative Law Judge to travel to San Juan for his purposes; it was even necessary, since a different investigating officer from the one who served the charges was presenting the case at San Juan, for the investigating officer who served the charges to travel from St. Croix to San Juan in order to establish the fact of service of notice of hearing.

I take official notice, of course, that hearings under R.S. 4450 have taken place in St. Croix.

Both in the initial service of notice of charges in this case, and in the outcome of the converging of witnesses, investigating officer, and trier of facts at a place where none of them was originally located and which was not the situs of the offenses, there is an appearance of arbitrary and capricious choice of venue. Convenience to the persons charges is not of itself a compelling considerations; inconvenience to everyone on the face of it, coupled with extreme inconvenience to the persons charged, is enough to invalidate the notice of hearing in the first place. (It

need not be set out in detail that many ways are available to insure valid service of notice, with the consent of at the request of a person charged, when a place of hearing unusual on its face is selected.)

Because I hold that the original notice of hearing in these cases was ineffective, I need not consider the import of a motion to join the cases of Appellants after a motion to sever the case of a third party had been granted, nor whether due process is accorded when, after a notice of hearing is given, that hearing is transformed into a hearing in joinder with another, whose alleged offense is distinct and in whose case the evidence is absolutely different, without overlap.

CONCLUSION

The dispositive nature of Appellants' first basis for appeal obviates a decision on the remaining bases for appeal. In light of the length of time elapsing from the discovery of the charged offenses and in view of the considerable effort and expense already involved in these cases, I find that the interests of justice would not be furthered by the re-institution of proceedings against Appellants.

ORDER

The orders of the Administrative Law Judge dated 26 October 1977 (BOLDS) and 27 October 1977 (BROOKS) are VACATED, and all charges, with respect to each Appellant, are DISMISSED.

J.B. HAYES
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 11th day of September 1979.

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